Prioritization (except for Regulatory and Industry Guideline changes and packaging), and Escalation and Dispute Resolution. CMP Declaration at ¶ 143. 70

Second, Qwest has compiled a solid record in meeting its obligations with respect to the various provisions and process milestones established in the CMP Framework, as discussed below. In Section V(D) of the CMP Declaration and the accompanying Exhibit DLF-CMP-5, Qwest describes on a section-by-section basis its record of implementation and compliance with the CMP Framework. Qwest's performance since the date of implementation (indicated in parentheses) of each of the key elements of its plan is impressive:

- In processing OSS Interface CRs, Qwest has met more than 99% of its commitments (since November 1, 2001).
- In processing CLEC-initiated product and process CRs, Qwest has met 98% of its commitments (since November 1, 2001).
- In processing Qwest-initiated Level 4 product and process CRs, Qwest has met 100% of its commitments. In processing Qwest-initiated product and process Level 1, Level 2, and Level 3 changes, Qwest has met 97% of its commitments. (Both since April 1, 2002).
- In introducing a new graphical user interface ("GUI"), Qwest has met 100% of the milestones (since November 1, 2001).
- In changing an application-to-application interface, Qwest has met 100% of the milestones reached thus far (since November 1, 2001).
- In changing a GUI, Qwest has met 100% of the milestones (since November 1, 2001).
- In issuing production support planned outage notifications, Qwest has issued 100% on a timely basis (since February 2002).

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70 The CMP redesign agreements reached more recently primarily cover aspects of change management that are beyond what any other RBOC offers, and beyond what the FCC has required for Section 271 approval. *Id.* These include, for example, Qwest-initiated product and process change request procedures, the process for postponement of change request implementation, and prioritization of regulatory changes. CMP Declaration at Sections III(C)(4),(7),(8),(13).

- In processing escalations, Qwest has met more than 98% percent of its commitments (since November 16, 2001).

- In issuing OSS interface release notifications, Qwest has issued 100% on a timely basis (since April 4, 2002). 71/

Qwest has also complied with other provisions of the CMP Framework since they were implemented, as shown in the CMP Declaration, Section V and Exh. DLF-CMP-5. Qwest has populated and maintained its website with CMP-related documents, as provided by the CMP Framework, and has posted and updated its OSS Interface Release Calendar. CMP Declaration at ¶¶ 124-26. Qwest also has met its obligations to (1) track and document the status of change requests; (2) hold regular CMP meetings; (3) provide meeting materials in advance of the meetings; and (4) record meeting discussion, action items, and issues. CMP Declaration at ¶¶ 147-48 and Exh.DLF-CMP-5. Qwest also has met its commitment, which became effective January 2, 2000, to provide green highlighting of all changes to its product catalog (PCAT) (over 350 changes since January 2) and to redline all changes to its technical publications (approximately nine since January 2), and to provide CLECs opportunities to comment on changes to these documents. CMP Declaration at ¶ 171.

For IMA-EDI release 10.0, Qwest met all but the last milestone (actual deployment, scheduled for June 16, 2002). *Id.* at ¶ 159. With respect to the PID applicable to the change management process, PO-16 (measuring timeliness of release notifications), Qwest met the benchmark within three of the last four months, ending with April, and will meet it again in May. CMP Declaration, ¶ 162; Regional Commercial Performance Results at 64 (PO-16). In order to remedy problems that occurred in earlier months, Qwest has improved its tracking and

71/ As discussed in the CMP Declaration at ¶¶ 161-64, in connection with PID PO-16, Qwest missed some of the release notification dates in the months before the CMP Framework release notification timeframes became effective (April 4, 2002).

release notification internal procedures and has designated a project manager to be responsible for ensuring that systems release notifications are tracked and issued on a timely basis. *Id.*, ¶ 163.

Qwest also has complied with the CMP prioritization procedures. In August 2001, and again in October/November 2001, CLECs and Qwest jointly prioritized CLEC and Qwest initiated CRs for the IMA 10.0 release. CMP Declaration at ¶ 166.. In February, they prioritized CLEC and Qwest initiated CRs and Industry Guideline CRs for the IMA 11.0 release. In February, there were only 9 outstanding CLEC-initiated CRs. *Id.*

KPMG evaluated Qwest's change management process in the Third Party Test, Test 23.72 Of 18 test criteria, KPMG found 11 satisfied and none unsatisfied, and classified as "unable to determine" the other seven. Final Report at 51, 513-32 (Table 23-2: Evaluation Criteria and Results). Overall, the KPMG results are positive and support the conclusion that Qwest has met all the criteria identified by the FCC as relevant under Section 271. For the most part, the issues remaining "unable to determine" by KPMG involve elements of the Qwest change management plan that are outside what the FCC has required for Section 271 purposes (*i.e.* changes to products and processes, postponement procedures, prioritization of regulatory changes, and the Special Change Request Process (SCRP). *See* Final Report at 526, 531; CMP Declaration at ¶¶ 107-109. 73/ Because these elements of the CMP Framework were agreed upon and implemented relatively recently, KPMG did not have a lengthy opportunity to evaluate them before the close of the test. *See* CMP Declaration, Exh. DLF-CMP-5.

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72 Other KPMG tests are relevant to certain other FCC change management criteria (EDI documentation, technical assistance, and interface testing) and are discussed above in the appropriate section and in the OSS Declaration, § VIII(A)

73/ The principal exception to this is KPMG's concern for about Qwest's procedures for tracking and issuing systems notifications. As discussed below, Qwest has had improved procedures in place since April 1, 2002, and has established a perfect record of compliance since that time. *See also* CMP Declaration at ¶162-64.

In the Final Report, KPMG found the following six evaluation criteria to be satisfied for systems change management: 74/

- The change management process responsibilities and activities are defined.
- The change management process is in place and documented.
- The change management process has a framework to evaluate, categorize, and prioritize proposed changes.
- The change management process includes procedures for allowing input from all interested parties.
- The change management process defines intervals for considering and notifying customers about proposed changes.
- Documentation regarding proposed changes is distributed to wholesale customers.

Of the seven unable to determine criteria in KPMG's Test 23, three related to systems interfaces. Final Report at 513-32. The other four concerned Qwest's procedures for handling product and process changes. and thus do not have implications for Section 271 approval, as the Commission has limited its Section 271 review to changes to a BOC's OSS interfaces. *Id. See, e.g., Georgia/Louisiana Section 271 Order* at ¶ 180 & n.673; App. D, ¶ 41.

Several issues were involved in KPMG's "unable to determine" conclusions. For example, KPMG noted that it had not had the opportunity to observe the improvements made in Qwest's tracking and notification procedures for systems release notifications. Final Report at 519-20, 523-25. Those improved procedures have been in place since April 1, 2002, however, and Qwest has had a perfect record of compliance since that time. CMP Declaration at 162-64. More fundamentally, as set forth in detail in the Process Improvements Matrix, Qwest has

74/ Final Report at 513-19, Evaluation Criteria 23-1-1, 23-1-2, 23-1-3, 23-1-4 , 23-1-5, 23-1-6. *See* CMP Declaration at ¶ 102.

already demonstrated a strong pattern of compliance over time with the rest of its redesigned CMP. *Id.*, Section V(D) and Exh. DLF-CMP-5. In the two months since it implemented the new procedures for Qwest-initiated product and process changes, Qwest also has demonstrated consistent compliance. *Id.*¶ 153. There is no reason to doubt that Qwest will continue to comply fully with the CMP Framework, including the recently adopted provisions.

KPMG also reached an "unable to determine" conclusion regarding the prioritization of systems changes. This was based, improperly, on its insistence that it should be able to review Qwest's compliance with each of the CMP Framework's notification and documentation requirements for an entire new major release. Final Report at 520-23; s*ee CMP Declaration at 110-113.*75 Qwest already has satisfied every CMP Framework milestone in IMA-EDI release 10.0, with the exception of actual deployment, which is scheduled for June 16, 2002. CMP Declaration at ¶166. KPMG's concern that it did not have an opportunity to observe the prioritization process in connection with certain recently-adopted CMP Framework elements also is not a Section 271 issue because these are not necessary elements of a Section 271-compliant change management plan. CMP Declaration, ¶¶ 104, 110-113. In any event, given Qwest's pattern of compliance on meeting its other CMP milestones, there is every reason to assume that Qwest will comply with the newer aspects of the redesigned CMP.

CGE&Y, the third party test consultant in Arizona, also reached positive conclusions with respect to Qwest's change management plan, as did the ACC Staff.76 The

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75 Because of the long lead time for planning a major release, Qwest will not have been able to show this until the June 16, 2002, implementation of IMA-EDI 10.0. CMP Declaration at ¶¶ 110-13. KPMG had adequate opportunities to review Qwest's compliance with aspects of the redesigned CMP Framework in connection with three releases: IMA-EDI 9.0, 10.0, and 11.0. CMP Declaration, ¶¶ 110-113.

76/ CMP Declaration at ¶¶ 118-120 and Exh. DLF-CMP-9 (CGE&Y May 1, 2002 Report on Qwest CMP and Redesign Process) Exh. DLF-CMP-10, ACC Staff Supplemental Report on

ACC Staff stated that "there is no question . . . that Qwest has, with extensive assistance by the CLECs, developed one of the most comprehensive and effective Change Management Processes in existence in the telephone industry today." CMP Declaration at ¶120, quoting ACC Staff Supplemental Report (May 7, 2002), at ¶ 86, CMP Declaration Exh. DLF-CMP-10. n sum, Qwest has demonstrated a strong record of compliance over an extended period of time with the key elements of its redesigned change management plan.

IV. QWEST'S PRICES FOR UNBUNDLED NETWORK ELEMENTS ARE CONSISTENT WITH THE FCC'S TELRIC METHODOLOGY

Qwest's rates for UNEs and other interconnection offerings in Colorado, Idaho, Iowa, Nebraska and North Dakota comply with Section 252(d)(1) of the Act and the Commission's established pricing rules, including the Total Element Long Run Incremental Cost ("TELRIC") methodology. 47 U.S.C. § 252(d)(1); 47 C.F.R. § 51.501 *et seq.* Each of the State Authorities conducted extensive pricing proceedings, guided by forward-looking cost-based principles. In the case of Colorado, the CPUC very recently adopted a full complement of TELRIC-compliant rates in proceedings that equaled if not exceeded the most rigorous in the nation. While the State Authorities in the other four states also established TELRIC-compliant rates, Qwest has made further reductions as a result of a "benchmark" analysis, using the rates recently established by the CPUC, to expedite the Commission's consideration of this consolidated application. *See* the multiple Declarations of Jerrold L. Thompson, Cost-Based

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Change Management (May 7, 2002), at ¶ 86. The ACC Staff recommended that the ACC find that Qwest meets the FCC requirements for change management, subject to certain data reporting and verification conditions, to which Qwest has agreed. ACC Staff Supplemental Report at ¶¶ 88-94; CMP Declaration at ¶120, and Exh. LN-OSS-76 (Qwest's Comments Regarding CGE&Y's Final Report, May 17, 2002).

Rates for Unbundled Network Elements and Interconnection in each of Colorado, Idaho, Iowa, Nebraska and North Dakota (each, respectively, the "Thompson [State] Decl."), Att. 5, App. A.

A. The CPUC Has Recently Completed a Comprehensive Proceeding to Establish TELRIC-Based UNE Rates in Colorado

The CPUC has many years of experience with setting rates for UNEs and other wholesale service offerings based on forward-looking cost. Indeed, when the FCC adopted its pricing rules in 1996, it cited the CPUC's pre-existing pricing rules and its proceeding to set unbundled loop rates as models for its own methodology. *Local Competition Order*, 11 FCC Rcd at 15818, ¶ 631 n.1509, 15884, ¶ 792. Subsequently, the CPUC conducted two extensive proceedings to adopt TELRIC-based UNE rates. The first of these proceedings, Docket No. 96S-331T, resulted in a series of orders in 1997. 77/ On review, the U.S. District Court for the District of Colorado affirmed that the CPUC had "applied TELRIC principles in its decisions." *U S WEST Communications, Inc. v. Hix*, Civ. Action No. 97-D-152, Order, slip op. at 6 (D. Colorado June 23, 2000). More recently, the CPUC concluded an extensive pricing proceeding in Docket No. 99A-577T, culminating with the *Colorado Pricing Order* issued on December 21, 2001, the *Colorado Pricing Reconsideration Order* issued on April 17, 2002, and the *Colorado Pricing Further Reconsideration Order* issued on June 6, 2002, which set rates for the UNEs and other rate elements included in Qwest's SGAT. 78/

77/ *Commission Order*, Decision No. C97-739 (July 28,1997); *Commission Order Errata Notice*, Decision No. C97-739-E (July 30, 1997); *Commission Order Errata Notice*, Decision No. C97-739-E (April 7, 1998); *Commission Order on Reconsideration, Rehearing and Reargument*, Decision No. C97-946 (Sept. 17, 1997). Att. 5, App. C.

78/ *U S WEST Communications, Inc.'s Statement of Generally Available Terms and Conditions*, Docket No. 99A-577T, Commission Order, Decision No. C01-1302 (mailed Dec. 21, 2001) ("*Colorado Pricing Order*"); Ruling on Applications for Rehearing, Reargument, or Reconsideration, Decision No. C02-409 (mailed Apr. 17, 2002) ("*Colorado Pricing Reconsideration Order*"). Att. 5, App. C.

Both the 1997 pricing proceeding (Docket No. 96S-331T) and the 2001-02 pricing proceeding (Docket No. 99A-577T) were open to all parties and among the most comprehensive in the nation. A significant number of CLECs, including, but not limited to, AT&T and WorldCom and their predecessors, along with the CPUC staff and the Colorado Office of Consumer Counsel ("OCC"), actively participated in each proceeding. Several cost models were presented and fully analyzed, and the CPUC allowed into the record and carefully considered extensive written submissions as well as several weeks of oral testimony that included cross-examination.

This Commission has repeatedly stated that, in Section 271 proceedings, it does not conduct *de novo* reviews of state commission pricing decisions, because – as the D.C. Circuit has agreed - "enormous flexibility is built into TELRIC." 79/ But even if, contrary to its precedent, the Commission were to undertake a *de novo* review of the CPUC's proceedings, it would find them rigorous and faithful to TELRIC. As the CPUC made clear in its most recent orders, it fully understood, and successfully executed, the task before it: "Our duty is to follow the FCC's TELRIC mandate." *Colorado Pricing Order* at 11; *see generally id.* at 10-13 (discussing overview of CPUC's analytical approach to TELRIC-based ratemaking).

In its proceedings, the CPUC relied on the HAI model -- paid for, privately developed on behalf of, and submitted by AT&T and WorldCom 80/ -- to set the recurring rates for the components of UNE-P: the analog local loop, local switching, and shared transport

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79/ *AT&T Corp. v. FCC*, 220 F.3d 607, 616 (D.C. Cir. 2000), *affirming New York 271 Order*, 15 FCC Rcd at 4084 (¶ 244); *Kansas/Oklahoma 271 Order*, 16 FCC Rcd at 6266 (¶ 59), *aff'd, Sprint Communications Co., L.P. v. FCC*, 274 F.3d 549, 556 (D.C. Cir. 2001); *Vermont 271 Order* at ¶ 15; *Georgia/Louisiana 271 Order* at ¶¶ 23-26.

80/ *See Local Competition Third Report and Order*, 15 FCC Rcd 3812, n.505; *Universal Service Tenth Report and Order*, 14 FCC Rcd at 20109, n.21.

(including tandem switching). 81/ In this respect, this consolidated application differs from all the other Section 271 applications filed to date, in which the respective state commissions rejected the CLECs' models and based their pricing decisions primarily or exclusively on the models proposed by the BOCs. *See, e.g.*, *Georgia/Louisiana 271 Order* at ¶¶ 29, 34; *Arkansas/Missouri 271 Order* 16 FCC Rcd 20745-50, ¶¶ 54-63; *Massachusetts 271 Order*, 16 FCC Rcd at 8997-98, ¶ 18; *Kansas/Oklahoma 271 Order*, 16 FCC Rcd 6261, 6273-74, ¶ 49. CLECs cannot be heard to complain about the CPUC's choice of this cost model, much less the openness of the model to review by its CLEC sponsors. 82/

Moreover, the CPUC conducted a thorough and rigorous TELRIC analysis. As described more fully in the Thompson Colorado Decl., this is not a case where a state commission adopted by rote or otherwise all or most of the inputs or assumptions proposed by the ILEC. To the contrary, the CPUC used many of the default inputs and assumptions in the HAI model. *Cf., e.g.*, *Georgia/Louisiana 271 Order* at ¶¶ 30, 37; *Kansas/Oklahoma 271 Order*, 16 FCC Rcd 6266-67, ¶ 60. Its input decisions rested strictly on TELRIC principles and successfully identified "what the prices would be if a theoretical, efficient company were to build a telecommunications network starting today, using the most recent technology and bound only

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81/ *Colorado Pricing Order* at 4; *Colorado Pricing Reconsideration Order* at 26 ("[W]e clarify that the adopted rates are established using the HAI model sponsored by the Joint Intervenors, with [CPUC]-modified inputs as described in this [reconsideration] decision. We used LoopMod [the Qwest-sponsored model] for the limited purpose of a secondary "check" on the HAI model outputs. We do not adopt here any rates derived from the LoopMod cost model runs."). *See* Att. 5, App. C. As discussed *infra*, the CPUC's shared transport rates used HAI-derived rate levels for each of the components of shared transport, but combined them using the weightings proposed by Qwest.

82/ With the support of AT&T, XO, WorldCom, and other CLECs, the CPUC set dedicated transport rates based on Qwest's TELRIC-compliant transport model. The CPUC also used Qwest's models to set rates for non-recurring charges and collocation.

by the location of the existing wire centers." 83/ Thus, the CPUC adopted TELRIC-compliant inputs and assumptions governing capital costs, expense factors, and other matters that affect rate levels for all recurring rates. Thompson Colorado Decl. at ¶¶ 47-52, Att. 5, App. A; *Colorado Pricing Order* at 40-74; *Colorado Pricing Reconsideration Order* at 28-60, Att. 5, App. C. The CPUC carefully considered proposed inputs and assumptions (including those relating specifically to loop rates, such as plant mix, drop lengths, fill factors, and line counts) and was meticulous in deriving variables consistent with TELRIC. Thompson Colorado Decl. at ¶¶ 28-46; *Colorado Pricing Order* at 40-52; *Colorado Pricing Reconsideration Order* at 28-47, Att. 5, App. C. The cumulative effect of these decisions is a set of rates that are well within "the range that the reasonable application of TELRIC principles would produce," *New York 271 Order*, 15 FCC Rcd at 4084, ¶ 244, with rates in some cases no higher than the extreme low end of that range.

Indeed, not only did the CPUC avoid errors that would push UNE rates *above* the range that a reasonable application of TELRIC would produce; in certain respects it excluded costs that could and, in Qwest's view, should have been recognized. 84/ For example, the CPUC lowered the statewide average loop rate significantly below what it otherwise would have been, all else held constant, by adopting cable placement assumptions that disregard many of the forward-looking costs of digging through concrete and asphalt to place cable in developed

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83/ *Colorado Pricing Order* at 11. The CPUC made clear its understanding that "prices using TELRIC are not to be based on historical costs or investment costs." *Id.* at 10; *see also Colorado Pricing Reconsideration Order* at 12-14.

84/ The point here is not to ask the Commission to increase the rates established by the CPUC, to invite it to opine on the TELRIC compliance of higher rates, or to have it criticize the CPUC's decision, but merely to underscore that the CPUC gave other parties the benefit of any reasonable doubt.

areas. 85/ Indeed, the CPUC itself acknowledged that the cable placement assumptions it adopted were "aggressive" in lowering forward-looking costs and that "Qwest may have some grounds in arguing such an assumption is fanciful in terms of what real forward-looking costs will be." *See Colorado Pricing Reconsideration Order* at 31, Att. 5, App. C.

We discuss next a few of the more significant rate elements, as follows: (1) analog loops; (2) local switching, (3) tandem switching and shared transport; (4) non-recurring charges ("NRCs"); and (5) the high-frequency portion of the loop ("HFPL") used in line-sharing arrangements.

Analog Loops. The CPUC applied the CLECs' proposed HAI model to develop a statewide average loop rate of $15.85 -- a significant reduction from the loop rate previously established by the CPUC and upheld by the reviewing federal district court as TELRIC-compliant. The specific rates differ in three separate pricing zones. As discussed above, the

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85/ Thompson Colorado Decl. at ¶¶ 29-36. Att. 5, App. A. The "essential objective" of TELRIC "is to determine what it would cost, in *today's* market, to replace the functions of [a network] asset that make it useful," Br. for Petitioners FCC and United States, *Verizon Communications Inc. v. FCC*, No. 00-511 *et al.*, at 6 (filed April 2001) (emphasis added), not how much that same endeavor *would have* cost at some point in the past, when present-day obstacles did not exist. A carrier building a forward-looking network today in populated areas would have to navigate roads, sidewalks, alleys and other physical structures. Thus, it would have to use more expensive methods to place cable, *i.e.*, it could not simply plow through a street, or trench and backfill a sidewalk. While the CPUC acknowledged this in theory, it nonetheless adopted the approach of the HAI model, which is designed to yield extremely low UNE rates by combining the most efficient technologies available today with geographic and other inputs that existed yesterday. *Colorado Pricing Order* at 45-46, Att. 5, App. C; Thompson Colorado Decl. at ¶¶ 33-34, Att. 5, App. A. Similarly, with respect to the separate "structure sharing" input, the HAI model unrealistically assumes that, even in already-developed areas, other utilities would agree to split nearly all of a carrier's placement costs 50-50, even though such developed areas will already contain most of the facilities of the other utilities. The CPUC accepted that assumption as well. *See Colorado Pricing Order* at 37-40; Thompson Colorado Decl. at ¶ 38. Att. 5, App. A. Taken together, the CPUC's adoption of these assumptions for both cable placement costs and structure sharing lowered the statewide average loop rate by about $1.00 to $1.50 (6 to 9 percent), all else held constant. Thompson Colorado Decl. at ¶ 39 n.80.

CPUC either used the default assumptions and inputs in the HAI model, or developed its own assumptions and inputs, each of which was at least consistent with TELRIC and, in a few cases, tended to push rates down toward the very low end of the reasonable TELRIC range. *See* Thompson Colorado Decl. at ¶¶ 53-54; *Colorado Pricing Order* at 74-75; *Colorado Pricing Reconsideration Order* at 57-60, Att. 5, App. C.

Local Switching Rates. The CPUC similarly established recurring rates for both the usage-sensitive local switching rate element ($0.00161 per minute) and the flat-rate line port rate element ($1.53 per month) that clearly are no higher than the low end of the TELRIC range. In the *Colorado Pricing Order*, the CPUC initially decided to retain the local switching rates that it had set, and that the District Court had affirmed as TELRIC-compliant, during the earlier cost docket. *Colorado Pricing Order* at 79 ("The switching rate from 331T will remain in effect as TELRIC-compliant."). Att. 5, App. C. In the *Colorado Pricing Reconsideration Order*, the CPUC adopted switching rates that, cumulatively, were substantially lower. 86/ Thereafter, AT&T and XO submitted a petition for reconsideration of the *Colorado Pricing Reconsideration Order* raising questions about these newly reduced rates. Once again, in order to eliminate controversy and expedite this Section 271 process, Qwest proposed still lower rates, which, in the *Colorado Pricing Further Reconsideration Order*, the CPUC endorsed. As the CPUC noted, Qwest's proposed switching rate reduction was "supported in this evidentiary record by running specified TELRIC-based inputs through the [HAI] cost models." *Colorado Pricing Reconsideration Order* at 7 n.2, Att. 5, App. C.

86/ *Colorado Pricing Reconsideration Order* at 6-7, Att. 5, App. C. The CPUC acted in response to a proposal submitted by Qwest to address objections -- meritless in Qwest's view -- raised by other parties

As explained in more detail in the Thompson Colorado Declaration at ¶¶ 56-65, the CPUC endorsed final local switching rates in the *Colorado Pricing Further Reconsideration Order* that are based on the HAI model, subject to modifications necessary to ensure compliance with TELRIC. First, as AT&T and XO had proposed, the switching rates originally proposed by the CLECs were adjusted to reflect the TELRIC-compliant modifications to the model inputs and assumptions adopted in the *Colorado Pricing Order* and the *Colorado Pricing Reconsideration Order*. Next, the following further TELRIC-based adjustments were applied:

- The rates incorporate an adjustment to eliminate an unsupported shift of costs from the traffic-sensitive per-minute rates to the non-traffic-sensitive port rates. Thompson Colorado Decl. at ¶ 58. 87/
- The rates incorporate an adjustment to the HAI model to account for the cost of applications software used to provide vertical features (a cost overlooked by the HAI model). *Id.* ¶ 62.
- The rates incorporate an adjustment to account for the fact that, whereas the HAI model determines costs per dial equipment minute ("DEM"), Qwest's local switching usage rate is denominated in billed minute of use. Since there will always be fewer billed minutes than DEMs, the per-minute rate should be derived based on dividing the HAI-produced numerator by a slightly smaller denominator than used in HAI (for the number of billed minutes). *Id.* ¶ 63.
- The rates were based on a switch fill factor of 82.5%, rather than the 94% fill factor proposed by the HAI model developers. *Id.* ¶ 59-61.

The 82.5% fill factor, upon which the local switching rates endorsed by the CPUC were based, is amply supported by the need for (1) administrative fill (unused capacity) in local

87/ Instead of recovering 40% of switching costs through usage-sensitive per-minute charges and 60% through the port rate, as proposed by the CLECs in the Colorado proceeding, the rate endorsed by the CPUC is designed to recover 70% of forward-looking switch costs through the usage-sensitive element and 30% from the non-traffic-sensitive element, consistent with FCC and state precedents and the CLECs' own past pricing advocacy. *MAG Order*, 16 FCC Rcd at 19655, ¶ 94 ("We adopt 30 percent of local switching costs as a reasonable proxy for [non-price cap ILECs'] line port costs" for ratemaking purposes).

switches; (2) capacity to accommodate short-term growth; and (3) capacity to accommodate provision of "soft dial tone" in apartments or other premises after one customer has moved out and before the next customer moves in. *Id.* The 82.5% switch fill factor is also a reasonable compromise halfway between (on the one hand) the 75% fill factor that Qwest contended was necessary to reflect a reasonable expectation of line growth over the life of the switch and the likelihood that a newly installed switch would need to be used for a number of years and (on the other hand) the 90% fill factor derived by adjusting the 94% default fill factor in the HAI model 88/ downward by 4 percentage points to accommodate a single year of growth. The 94% fill factor used in the HAI model barely provides sufficient spare capacity to handle administrative fill during a snapshot in time, and provides no margin for anticipated growth in demand, which an efficient carrier would have to plan for on a forward-looking basis. 89/ Thompson Colorado Decl. at ¶ 59-61

88/ The 94% fill factor used in the FCC's Synthesis Model for purposes of allocating nationwide federal universal service funds in no way supports a higher fill factor for purposes of setting a switching rate in Colorado or any other state. Indeed, the FCC has specifically rejected AT&T's contrary argument on the ground that "Synthesis Model fill factors . . . *should not be used* for setting rates." *Vermont 271 Order*, ¶ 36 (emphasis added). More generally, as the Commission and reviewing courts have long confirmed, states are free to disregard the Synthesis Model, as well as its inputs and assumptions, in setting UNE rates. *See also AT&T Corp. v. FCC*, 220 F.3d 607, 619 (D.C. Cir. 2000); *Georgia/ Louisiana 271 Order*, ¶ 82; *Kansas/Oklahoma 271 Order*, 16 FCC Rcd at 6277 (¶ 84); *New York 271 Order,* 15 FCC Rcd at 4085 (¶ 245); *Federal-State Joint Board on Universal Service*, Tenth Report and Order, 14 FCC Rcd 20156, ¶ 32 (1999) ("We caution parties from making any claims in other proceedings based upon the input values we adopt in this Order."), *aff'd sub nom. Qwest Corp. v. FCC*, 258 F.3d 1191 (10th Cir. 2001).

89/ The FCC has affirmed as TELRIC-compliant state pricing orders that use significantly lower fill factors than those proposed here to set local switching UNE rates. For example, Vermont used local switching fill factors of 81% for analog lines and 72% for integrated digital loop carrier ("IDLC") lines. *Vermont 271 Order*, ¶ 36. By contrast, use of a 94% fill factor would mean that the carrier would have only enough switch capacity to serve existing lines at a given moment in time; most or all of the remaining capacity would be needed for administrative

The final switching rates that Qwest proposed and the CPUC endorsed in the *Colorado Pricing Further Reconsideration Order* did not account for the higher per-line forward-looking costs of growth additions (i.e., the model accounted only for the lower per-line costs of new switches) or the additional costs of the switch software upgrades purchased over the lifecycle of the switches, even though in each case these are genuine forward-looking costs that are properly included in UNE rates. These rates also did not take into account the forward-looking cost of measuring and tracking minutes of use on a given line to facilitate Qwest's correct billing of CLECs for switching-related costs, which alone would have added another $.00064 per minute to the local switching usage rate. Thompson Colorado Decl. at ¶ 65. As a result, the final switching rates are certainly no higher than the low end of the reasonable TELRIC range. As noted above, the resulting rates are significantly lower than the rates previously ordered by the CPUC and affirmed by the District Court. *Id.* ¶ 64.

Although the CPUC confirmed that the switching and shared transport rates are TELRIC-compliant, *Colorado Pricing Further Reconsideration Order* at 12, Att. 5, App. C, it noted that it intended to re-examine these rates (and certain others) in an upcoming phase of the cost docket, and used the term "interim" to characterize them. 90/ Nonetheless, it emphasized

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uses. Thus, in a state where the line growth rate is approximately 4%, the carrier would run out of capacity for new customers within a single year or so.

90/ *Colorado Pricing Reconsideration Order* at 11, Att. 5, App. C. Qwest's SGAT includes rates for certain recently-introduced elements that were not addressed by the CPUC, but are scheduled to be addressed during the upcoming Phase II pricing proceeding. These recently arising Phase II rate elements, for which there is as yet virtually no CLEC demand, include new variations of collocation arrangements, very high-capacity loop and transport elements, and other newly introduced UNEs and UNE combinations. Specifically, they include recurring rates for collocation adjustments and credits; remote collocation; OC-n capable loops; OC48 and OC-n remote node dedicated transport; additional dark fiber offerings; digital trunk ports; MUX combinations; EEL transport OC-n level; and unbundled packet switching for remote terminal exception. They also include nonrecurring rates for deposits; miscellaneous labor charges; miscellaneous hi-cap loop installations; intra-building cable; OC 48 and OC-n remote node;

that "the rates we set here, whether given the name permanent or interim, are the *effective* rates to be charged by Qwest." *Colorado Pricing Further Reconsideration Order* at 11-12 (citation and emphasis in original), Att. 5, App. C. 91/

Tandem Switching and Shared Transport. The CPUC initially decided to retain the court-approved, TELRIC-compliant 331T rates for tandem switching (which affect the rate for shared transport) and revisit these rate elements instead in the next phase of the pricing proceeding. AT&T and XO, in a petition for reconsideration of the *Colorado Pricing Reconsideration Order*, argued that the HAI model, as modified by the CPUC's orders in Docket 99A-577T, would yield a tandem switching rate of $0.00069 per minute for tandem switching and $0.00113 per minute for shared transport. AT&T/XO RRR App. at 5. In the interest of expediting this Section 271 proceeding, Qwest agreed to the rates proposed in that AT&T/XO reconsideration petition, subject to further review in Phase II of the CPUC's proceeding. Qwest noted, however, that it derived a slightly lower figure of $0.00111 per minute for shared transport, based on combining the HAI-derived costs for tandem switching and dedicated transport using the weightings that Qwest had proposed. The CPUC, in the *Colorado Pricing*

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customized routing; line splitting; DID, DSS and PRI trunks; LNP managed cuts; and miscellaneous elements relating to access to poles, ducts, conduits and right of way.

Notably, the number of discrete rate elements (approximately 200) says nothing about the actual number of services at issue or about the significance of those services. For example, OC-n EEL transport accounts for 24 separate rate elements, but not a single CLEC has ever placed an order for OC-n EEL transport in Colorado or in any other state in Qwest's region. Unbundled packet switching accounts for 9 rate elements, but, again, not a single CLEC has ever ordered unbundled packet switching. Remote collocation accounts for 13 rate elements; CLECs have ordered two remote collocation arrangements in Colorado (and none elsewhere in the region). *See* Decl. of Bumgarner Collocation Decl. at ¶¶ 96, 100, 106, 112, 118.

91/ The Vermont Board has aptly observed that "all rates that we set are at once final and interim, since, one, any change to them must be authorized by Board order, and, two, any of them can be changed on a forward-looking basis pursuant to future Board orders based on an appropriate record." *Vermont 271 Order* at ¶ 23 (citing *Vermont UNE Rate Order* at 101).

Further Reconsideration Order, endorsed the $0.00069 rate level for tandem switching and the $0.00111 rate level for shared transport. *Colorado Pricing Further Reconsideration Order* at 11-12.

Non-Recurring Charges. The CPUC adopted a full suite of NRCs, based largely on the cost model submitted by Qwest, albeit with adjustments that lowered the rates significantly below the levels Qwest had proposed. Some of the resulting rates are among the lowest in the industry. For example, Qwest's CPUC-established rate for converting an existing Qwest POTS line to a CLEC-served UNE-P is 68 cents for the first line and 14 cents for additional lines that a CLEC submits in a single order, if the CLEC submits the order through electronic interfaces so that it can be implemented through *mechanical* processing; if the CLEC submits the order by fax so that *manual* processing must be used, the rates are $12.19 for the first line and $2.03 for each additional line. Qwest's rates for other primary NRCs are also well within the range of TELRIC compliance, as can be confirmed by comparing them with rates set in other Section 271-approved states. Thompson Colorado Decl. at ¶¶ 74-91 & Exhibit JLT-CO-2. For example, Qwest's rates for the most commonly ordered forms of loop provisioning are, for basic loop installation, $55.27 for the first loop; for coordinated installation (often referred to as a "hot cut") without cooperative testing, $59.81 for the first loop. 92/ The Thompson

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92/ *See* Colorado SGAT, Exhibit A, §§ 9.2.3.1, 9.2.2.3, Att. 5, App. B. To the extent that some of the non-recurring rate levels may exceed those charged by other successful Section 271 applicants, one explanation may be that, unlike those jurisdictions, which established separate NRCs for connection and disconnect, the CPUC does not allow Qwest to impose charges on CLECs when they disconnect service. Instead, the CPUC appropriately establishes installation NRCs to recover the forward-looking costs of disconnection as well as the up-front costs. The CPUC found this rate structure to be justified by Qwest's need to protect itself against the risk of non-payment by terminating CLECs. *See Colorado Pricing Order* at 56-57; *Colorado Pricing Further Reconsideration Order* at 64-65, Att. 5, App. C; Thompson Colorado Decl. at ¶¶ 88-89. The FCC has explained that rates established by different state commissions can and will differ without violating TELRIC. *Georgia/Louisiana 271 Order* at ¶ 24 ("state commissions may

Colorado Declaration includes a full explanation of the methodology used to determine these and other NRCs adopted by the CPUC, including those for collocation. Thompson Colorado Decl. at ¶¶ 74-91.

Line Sharing Rates. The CPUC initially set a recurring rate of $4.89 for the HFPL, and reaffirmed that decision in the *Colorado Pricing Reconsideration Order*. The CPUC concluded that, as a matter of economic theory and pursuant to the FCC's pricing rules, a positive price is necessary (1) to avoid "inappropriately increasing reliance on this form of technology, and inappropriately discouraging the efficient deployment of cable and wireless technologies[;]" (2) because "all telecommunication service provided over the loop . . . should bear some portion of loop costs" pursuant to the requirements of the CPUC's Costing and Pricing Rules, 4 CCR 723-30–4.2(a)(iv); and (3) because the $4.89 rate level was "agreed to under the negotiation/arbitration process established under § 252 of the Act . . . and falls within a zone of reasonableness measured against the goals of the Act and the objectives of the FCC's pricing rules." 93/

On further reconsideration, Covad renewed its argument for a zero recurring rate for the HFPL element. Qwest expressed its willingness to reduce its recurring HFPL rate to zero

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reach different reasonable decisions on matters in dispute while correctly applying TELRIC principles"); *Vermont 271 Order* at ¶ 26 ("'application of TELRIC principles can result in different rates in different states'") (citing *AT&T Corp. v FCC*, 220 F.3d at 615, *upholding New York 271 Order*, 15 FCC Rcd at 4084, ¶ 244).

93/ *Colorado Pricing Order* at 108, 113-14, 116; *Colorado Pricing Reconsideration Order* at 83, Att. 5, App. C. The FCC *Line Sharing Order* discusses the issue of how the charge for the HFPL element should be derived. *Line Sharing Order*, 14 FCC Rcd at 20975-76, ¶¶ 137-41. While it clearly requires states to "ensure that CLECs and ILECs incur the same cost for access to the bandwidth required to provide xDSL services," *id.* at 20976, ¶ 141, it does not specify how this requirement is to be implemented. Moreover, the *Line Sharing Order* discusses a specific methodology that states "may" use, but the order does not require them to use that particular methodology, or any other. *Id.* at 20975-76, ¶ 139.

for the time being, subject to further consideration of the issue before the CPUC in Phase II or in a future proceeding, and subject to further clarification from the FCC, if available, of the pricing requirements of the *Line Sharing Order*, 14 FCC Rcd at 20975-76 (¶¶ 137-41). In the *Colorado Pricing Further Reconsideration Order*, however, the CPUC rejected this approach, concluding, "One absolutely wrong theoretical price is the one proffered by Covad, and now Qwest, here. Zero cannot be the right price for a scarce good with a positive demand." *Colorado Pricing Further Reconsideration Order* at 17 (§ II.D.3, ¶ 3), Att. 5, App. C. Qwest will comply with the CPUC's mandate in this regard. 94/

In sum, a TELRIC-compliant suite of UNE and interconnection rates is in place in Colorado. Qwest therefore satisfies the pricing prong of the Section 271 checklist in Colorado.

B. Qwest's UNE Rates in Idaho, Iowa, Nebraska, and North Dakota are Within the Range that a Reasonable Application of TELRIC Principles Would Produce

The regulatory agencies for Idaho, Iowa, Nebraska, and North Dakota each conducted thorough pricing proceedings that were intended to, and did, produce TELRIC-compliant rates. The IUB conducted an extensive series of rulemaking-style UNE pricing

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94/ As in other Section 271 proceedings, unresolved legal disputes of general significance -- here, any dispute about proper implementation of the Commission's DSL "imputation" methodology -- provide no basis for denying a Section 271 application. As the Commission has explained, "the section 271 process could not function as Congress intended if we adopted a general policy of denying any section 271 application accompanied by unresolved pricing and other intercarrier disputes." *Texas 271 Order*, 15 FCC Rcd at 18394, ¶ 87. Indeed, "at any given point in time at which a section 271 application might be filed, the rapidly evolving telecommunications market will have produced a variety of unresolved, fact-specific disputes concerning the BOC's obligations under sections 251 and 252." *Id.* Although "BOCs and their competitors can be expected to take opposite positions in those disputes," and although "the adjudicated resolution ultimately will often fall somewhere in between the positions of the opposing parties," this Commission has rightly found that Congress did not intend for "uncertainty about the proper outcome of such disputes" to "undermine a section 271 application." *Id.*

proceedings. Although the IUB did not label its methodology "TELRIC," it did use an explicitly forward-looking methodology very similar to the TELRIC methodologies employed by other states in which Bell companies have received section 271 approval. 95/ Similarly, the NPSC very recently completed a comprehensive rulemaking proceeding to establish TELRIC-based rates in Nebraska. *See Nebraska Pricing Order*, Att. 5, App. C. And the commissions in Idaho and North Dakota, with the assistance of Liberty, conducted comprehensive arbitrations between Qwest and AT&T that produced TELRIC-based rates. *See IPUC Arbitration Order* and *IPUC Final Order on Arbitration*; *Arbitration Approval Order*; *AT&T Communications of the Midwest Inc. Interconnection Arbitration Application*, Case No. PU-453-96-497, Order Approving Arbitrated Agreement, at 5-6 (ND PSC June 23, 1997), Att. 5, App. C.

Nonetheless, to expedite the Commission's consideration of these applications, Qwest has adjusted its core UNE rates in Idaho, Iowa, Nebraska and North Dakota in a manner designed to comply with the Commission's benchmarking analysis, using Colorado as the benchmark state. It is well established that a Section 271 applicant may rely on the "existing work product" of another state if the Commission concludes that the rates in that other state are

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95/ Thompson Iowa Decl. at ¶¶ 21-22. The IUB's UNE pricing methodology is based on forward-looking economic costs; specifies use of "Total Element" and "Incremental Cost" concepts; and permits recovery of "a fair attribution" of "economic shared and common costs" and a reasonable forward-looking profit. *U S WEST Communications, Inc.*, Docket No. RPU-96-9, Final Decision and Order, 1998 WL 265370, slip op. at 14-15 (Iowa Util. Bd., April 23, 1998) ("*Iowa Pricing Order*"), *clarified on rehearing*, 1998 WL 417454, (Iowa Util. Bd., June 12, 1998), *aff'd sub nom. U S WEST Communications, Inc. v. Thoms*, Civ. No. 4-97-CV-30082 (S.D. Iowa Jan. 25, 1999); *recon. granted and judgment amended*, No. 4-97-CV-30082 (S.D. Iowa Apr. 19, 1999). Most significantly, the IUB found that no party had submitted a model into the record that complied with its ideal principles, and so set UNE rates based on the TELRIC-based Hatfield Model submitted by AT&T and MCI. The reviewing court indicated that the IUB's approach was similar to that adopted by the Texas PUC. *U S WEST Communications, Inc. v. Thoms*, Civ. No. 4-97-CV-30082 (S.D. Iowa Jan. 25, 1999) (affirming IUB decision), slip op. at 69, citing *Southwestern Bell Tel. Co. v. AT&T Comm. of the Southwest, Inc.*, 1998 WL 657717, at *10-*13 (W.D. Tex., Aug. 31, 1998); *see also Texas 271 Order.*

TELRIC-compliant. 96/ In this case, applying a benchmarking approach to Idaho, Iowa, Nebraska and North Dakota should satisfy the cost-based pricing requirement of Section 271, based on the demonstration above that rates in Colorado are TELRIC compliant.

First, for each recurring unbundled loop rate element (including 2-wire and 4-wire analog loops in each geographic pricing zone, and DS1 and DS3 high-capacity loops), as well as each UNE rate element that is included in UNE-P (*i.e.*, local switch usage, local switch port, tandem switching, and shared transport), Qwest compared the existing rates in each state with "Colorado benchmarked rates" -- that is, rates produced by multiplying the corresponding Colorado rates by the cost ratio between the respective state and Colorado predicted by the adjusted version of the FCC's Synthesis Model that the FCC has used in prior Section 271 decisions relying on rate benchmarking. 97/

Consistent with numerous FCC 271 precedents, Qwest compared the rates in other states with the rates in Colorado in two groupings: (1) loop-related rate elements, and (2) non-loop-related UNE-P rate elements. For loop-related recurring rate elements, Qwest took

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96/ *Pennsylvania 271 Order*, 16 FCC Rcd at 17456-58, ¶¶ 61-66; *see also Arkansas/Missouri 271 Order*, 16 FCC Rcd at 20752, ¶ 68; *Kansas/Oklahoma 271 Order*, 16 FCC Rcd at 6276 (¶ 82 n.244). Such a rate comparison is particularly valuable where the states are served by a common BOC and have similar, though not necessarily identical, rate structures. *Pennsylvania 271 Order*, 16 FCC Rcd at 17456-58, ¶ 63. To assess cost differences, the Commission uses an adjusted version of the Synthesis Model that it adopted for purposes of estimating relative cost differences among states in the universal service context. *Id.*, n.249; *see Universal Service Tenth Report and Order*, 14 FCC Rcd 20106; *Arkansas/Missouri 271 Order*, 16 FCC Rcd at 20746-47, ¶ 57. "[I]f the percentage difference between the applicant state's rates and the benchmark state's rates does not exceed the percentage difference between the applicant state's costs and the benchmark state's costs, as predicted by the USF model, then we will find that the applicant has met its burden to show that its rates are TELRIC-compliant." *Pennsylvania 271 Order*, 16 FCC Rcd at 17457-58, ¶ 65.

97/ *See, e.g.*, *Pennsylvania 271 Order*, 16 FCC Rcd at 17458, n.249 (model adjusted to reduce overhead cost and spread over all elements, to incorporate cost of access usage as well as local usage into usage-sensitive elements, and to include allowance for wholesale uncollectibles rather than retail uncollectibles).

the statewide average Colorado rate for 2-wire analog loops, used the FCC's modified version of the Synthesis Model to adjust that rate to a "benchmark" level for each of the other states, and compared the product with each state's statewide average 2-wire analog loop rate. In Idaho, Iowa, Nebraska and North Dakota, the existing composite rates in each state exceeded the Colorado benchmarked composite rate for the state. Thus, for each of these states, Qwest reduced the 2-wire loop rates in each zone in the state by a uniform percentage to bring the composite statewide average rate down to the level of the Colorado benchmarked composite rate. Qwest then computed the rate relationships between the CPUC-adopted 2-wire loop rate and the rates the CPUC adopted for other types of loops (*e.g.*, 4-wire analog loops, sub-loop distribution, and various types of high-capacity loops); applied the same rate relationships to the "benchmark" 2-wire rates in each zone in the other state to develop benchmark rates for each of these loop rate elements; and applied the same process of rate reductions where necessary. Qwest did not implement rate reductions in cases where the existing rate in a state was already below the benchmark rate derived from the Colorado-ordered rate.

For the non-loop UNE-P recurring rates, Qwest undertook a similar, but slightly different, process of benchmark rate comparisons. Following the FCC's standard benchmarking methodology, Qwest developed a composite per-line rate for the non-loop portion of UNE-P, both for Colorado and for each of the other states, combining per-line and usage sensitive rate elements using the standard FCC methodology. 98/ In Idaho, Iowa, Nebraska and North Dakota,

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98/ To convert the per-minute rates for local switching and shared transport to per-line equivalents, Qwest assumed 1200 originating and 1200 terminating local minutes per line per month; 370 originating and terminating intraLATA toll, intrastate interLATA, and interstate interLATA minutes per line per month; 25% of local minutes are intra-switch and 75% are inter-switch; and 20% of transport minutes utilize the access tandem switch. These assumptions are the same as the FCC assumed values used in many prior Section 271 filings. *See Pennsylvania 271 Order*, 16 FCC Rcd at 17459, n. 252.

the resulting benchmark-adjusted composite non-loop UNE-P rates for Colorado were lower than the composite non-loop UNE-P rate for each of the states. Qwest adjusted the non-loop UNE-P rates in these states as follows. First, the shared transport rates and tandem switching rates in each state were reduced to the same actual price levels -- $0.00111 per minute and $0.00069 per minute, respectively -- as those adopted by the CPUC. Next, Qwest adjusted the per-minute local switching usage rate element to bring the comparison state's composite rate for the non-loop UNE-P elements down to the same level as the benchmark-adjusted version of the corresponding Colorado composite rate. No rate reductions were applied to the local switch port rates in any of the four states, since those rates already had relatively low rate levels by comparison to levels in many other states. Thompson Idaho Decl. at ¶ 32; Thompson Iowa Decl. at ¶ 55; Thompson Nebraska Decl. at ¶38; Thompson North Dakota Decl. at ¶ 27.

With respect to non-recurring charges relating to installation of unbundled loops, Qwest reduced the rates that exceeded their counterparts in Colorado to equal the Colorado rates. 99/ Additional information about the rate elements that were changed and about the specific methodology used to compute those rate changes is available in the separate Declarations of Jerrold Thompson for each of Idaho, Iowa, Nebraska and North Dakota. 100

Qwest implemented the rate reductions in these four states by filing revised SGATs (and in the case of Iowa, a revised tariff as well). The State Authorities in each of these

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99/ Since the Commission's cost model cannot be used for non-recurring charges, the Commission compares the absolute rate levels of non-recurring charges between the applicant state and the benchmark state without making cost adjustments. *See, e.g., Arkansas/Missouri 271 Order*, 16 FCC Rcd at 20747, ¶ 57 n.159, 20753, ¶ 71, 20755, ¶ 74.

100/ With the permission of the state commissions, Qwest reduced the HFPL rates in Idaho and North Dakota from $5.00 to zero. The IUB had already set the HFPL rate in Iowa at zero, and Qwest did not modify the $1.56 HFPL rate adopted by the NPSC in Nebraska. *See, e.g.*, Thompson Nebraska Decl. at ¶ 29.

states issued orders allowing the rates to take effect on June 6 or 7, 2002, subject to potential further revisions in future UNE pricing proceedings. 101/ Qwest will continue to make these rates available in these states unless and until they are superseded by new rates ordered by the relevant State Authority.

In sum, as a result of the TELRIC-compliant state rate decisions, combined with the voluntary rate reductions implemented by Qwest, the rates in Idaho, Iowa, Nebraska and North Dakota are certainly no higher than "the range that a reasonable application of TELRIC principles would produce."

V. QCC WILL PROVIDE INTERLATA SERVICES IN COMPLIANCE WITH THE REQUIREMENTS OF SECTION 272

As required by the 1996 Act, all services that are subject to the requirements of Section 272 will be provided through a separate affiliate that complies with the requirements of that section and the Commission's rules. Here, the BOC is QC. The Section 272 affiliate is QCC. Section 271(d)(3)(B) provides that the Commission shall not approve this application unless it finds that the requested authorization will be carried out in accordance with the

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101/ *U S WEST Communications, Inc.'s Motion for an Alternative Procedure to Manage its Section 271 Compliance*, Case No. USW-T-00-3, Commission Final Decision on Qwest Corporation's Compliance With Section 271, at 6-7 (Idaho PUC June 10, 2002); *Qwest Corporation*, Docket No. TF-02-202, Order Approving Tariff (Iowa Utils. Bd. June 7, 2002); *In The Matter of the Commission, on its Own Motion, to Investigate Cost Studies to Establish Qwest Corporation's Rates for Interconnection, Unbundled Network Elements, Transport and Termination, and Resale*, Application No. C-2516/PI-49, Compliance Filing Approved in Part and Denied in Part & Other Rates Declared Effective (June 5, 2002); *U S West Communications Section 271 Compliance Investigation; U S West Communications Section 242(f) Statement of Generally Available Terms Application*, Case Nos. PU-314-97-193, PU-314-00-282, Tr. of Comm'n Meeting, June 5, 2002, Att. A, App. C; Thompson Idaho Decl. at ¶¶ 22-24; Thompson Iowa Decl. at ¶¶ 47-48; Thompson Nebraska Decl. at ¶30-31; Thompson North Dakota Decl. at ¶¶ 19-21. Att. 5, App. A.

requirements of Section 272. This application, including the Declarations of Judith L. Brunsting and Marie E. Schwartz, demonstrates that Qwest complies with this requirement.

Section 272 defines how a BOC and its affiliate offering in-region interLATA services must operate once the BOC receives Section 271 authority. The FCC set standards for compliance with Section 272 in the *Accounting Safeguards Order* and the *Non-Accounting Safeguards Order*. 102/ Together, these safeguards discourage and facilitate the detection of improper cost allocation and cross-subsidization between the BOC and its Section 272 affiliate. 103/ In addition, these safeguards ensure that BOCs do not discriminate in favor of their Section 272 affiliates. 104/ To satisfy Section 271(d)(3)(B), the BOC and the 272 affiliate must present evidence that they are prepared to operate under the terms of Section 272 once the BOC is granted authorization to provide in-region interLATA services. In essence, the Commission makes a "predictive judgment" about whether the BOC applicant will comply with Section 272. 105/ In making this predictive judgment, the Commission should give weight to the

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102/ *See Implementation of the Accounting Safeguards Under the Telecommunications Act of 1996*, 11 FCC Rcd 17539 (1996) ("*Accounting Safeguards Order*"), *recon.*, 15 FCC Rcd 1161 (2000); *Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended*, 11 FCC Rcd 21905 (1996) ("*Non-Accounting Safeguards Order*"), *first recon.*, 12 FCC Rcd 2297 (1997); *second recon.*, 12 FCC Rcd 8653 (1997), *aff'd sub nom. Bell Atlantic Tel. Cos. v. FCC*, 131 F.3d 1044 (D.C. Cir. 1997); *third recon.*, 14 FCC Rcd 16299 (1999) ("*Non-Accounting Safeguards Third Order on Reconsideration*").

103/ *Non-Accounting Safeguards Order*, 11 FCC Rcd at 21914; *Accounting Safeguards Order*, 11 FCC Rcd at 17550; *Arkansas/Missouri 271 Order*, 16 FCC Rcd at 20,780 ¶ 122.

104/ *Non-Accounting Safeguards Order*, 11 FCC Rcd at 21914, ¶¶ 15-16; *Michigan 271 Order*, 12 FCC Rcd at 20725, ¶ 346; *Arkansas/Missouri 271 Order*, ¶ 122.

105/ *Michigan 271 Order*, 12 FCC Rcd at 20715, ¶ 347 ("Section 271(d)(3)(B) requires the Commission to make a finding that the BOC applicant will comply with section 272, in essence a predictive judgment regarding the future behavior of the BOC."); *see also Second Louisiana 271 Order*, 3 FCC Rcd at 20785 ¶ 321.